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12 Attorneys for Defendants
13 LENNOX HEARTH PRODUCTS INC.; LENNOX
14 INTERNATIONAL INC.; LENNOX INDUSTRIES
15 INC.

16 UNITED STATES DISTRICT COURT
17
18 NORTHERN DISTRICT OF CALIFORNIA

19 KIRK KEILHOLTZ and KOLLEEN
20 KEILHOLTZ for themselves and on behalf
21 of those similarly situated,

22 Plaintiffs,

23 v.

24 LENNOX HEARTH PRODUCTS INC.;
25 LENNOX INTERNATIONAL INC.;
26 LENNOX INDUSTRIES; and DOES 1
27 through 25, Inclusive,

28 Defendants.

Case No. 4:08-cv-00836-CW (JCS)

**STIPULATION AND ORDER
REGARDING THIRD AMENDED
COMPLAINT AND RESPONSE DATE
THERE TO**

TO THE COURT AND ALL ATTORNEYS OF RECORD:

By and through their counsel of record, Plaintiffs Kirk Keilholtz and Kolleen Keilholtz (collectively "Plaintiffs"), and Defendants Lennox Hearth Products Inc., Lennox International Inc. and Lennox Industries Inc. (collectively "Defendants") hereby stipulate to the following:

1. Plaintiffs filed a Second Amended Complaint on June 29, 2009, which Defendants thereafter moved to dismiss on July 9, 2009.

2. On September 8, 2009, the court issued an order dismissing the request in the Second Amended Complaint for damages under the Consumer Legal Remedies Act ("CLRA") on

1 the grounds that Plaintiffs had failed to comply with the CLRA notice requirements. In the order,
2 the court ruled that Plaintiffs could seek leave to amend their pleading after attempting to comply
3 with the CLRA notice requirements.

4 3. Plaintiffs desire to file an amended pleading seeking damages under the CLRA.
5 In order to avoid unnecessary motion practice, the parties hereby stipulate that Plaintiffs may file
6 a Third Amended Complaint that includes new allegations regarding their alleged compliance
7 with the CLRA notice requirements and a request for damages under the CLRA.

8 4. By entering into this stipulation, Defendants do not waive, and have no intention
9 of waving, any arguments regarding whether Plaintiffs have complied with the CLRA notice
10 requirements, the propriety of any amendments, and/or any deficiencies in the Third Amended
11 Complaint. Defendants expressly reserve the right to challenge any amendments and/or
12 deficiencies via a Motion to Dismiss, Motion for Summary Judgment, or otherwise.

13 5. The parties hereby stipulate that Defendants shall file their responsive pleading
14 within twenty (20) days after Plaintiffs file their Third Amended Complaint. The parties agree
15 that Defendants need not file an answer to the Second Amended Complaint since Plaintiffs intend
16 to file a superseding pleading.

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1 **IT IS HEREBY STIPULATED:**

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3 DATED: October 19, 2009

DOWNEY BRAND LLP

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5 By: /s/ William R. Warne

6 WILLIAM R. WARNE
7 Attorney for Defendants
8 LENNOX HEARTH PRODUCTS INC.
9 LENNOX INTERNATIONAL INC.
10 LENNOX INDUSTRIES INC.

11
12 DATED: October 19, 2009

ARNOLD LAW FIRM


13
14 By: /s/ Kirk Wolden (as authorized on 10/19/09)

15 KIRK WOLDEN
16 Attorney for Plaintiffs
17 KIRK KEILHOLTZ and KOLLEEN
18 KEILHOLTZ for themselves and on behalf of
19 those similarly situated
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1 **IT IS SO ORDERED:**

2 The court, having considered the Stipulation of the parties and good cause appearing,
3 hereby grants Plaintiffs leave to file a Third Amended Complaint that includes new allegations
4 regarding their alleged compliance with the CLRA notice requirements and a request for damages
5 under the CLRA. Defendants shall file their responsive pleading within twenty (20) days after
6 Plaintiffs file their Third Amended Complaint. Defendants have reserved the right to challenge
7 the amendments and/or any deficiencies in the Third Amended Complaint via a Motion to
8 Dismiss, Motion for Summary Judgment, or otherwise.

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10 Dated: 11/23/09 _____

By:  _____
HONORABLE CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE,
NORTHERN DISTRICT OF CALIFORNIA